

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ARTHUR CARSON,
TDCJ NO. 517349
Plaintiff,

v.

DIANE JOHNSON, ET AL.,
Defendants.

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CIVIL ACTION NO. 6:06CV559

MARTINEZ REPORT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, University of Texas Medical Branch at Galveston, Texas (UTMB), Dianne Johnson, Virginia Buchanan, B. Young, G. Karriker and Larry LeFlore, respectively, hereinafter referred to as Respondents in the above entitled and numbered cause, and submit this report as ordered by the Court pursuant to *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978), as follows:

I.

Once again, prospective Plaintiff, Arthur Carson, an inmate at the Michael Unit of the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID)*, has filed a civil rights suit under 42 U.S.C. §1983, alleging that Respondents have violated his constitutional rights under the VIII Amendment. Mr. Carson' alleges that he has been subjected to retaliation in the form of deliberate indifference to his serious medical needs and that Larry LeFlore, the TDCJ Director of Classification and Records failed to supervise his subordinates by not vetoing his latest transfer to from the Coffield Unit to the Michael Unit. Mr. Carson alleges that the retaliation is in response to a settlement agreement in a lawsuit that was concluded in 1991.

II.

The classification and transfer issues have been alleged and discussed previously, and was the subject of a show cause order responded to in January 2007. Mr. Carson is now saying that Mr. LeFlore is now aware of the settlement agreement that transferred him from the Michael Unit, but allowed him to be transferred there anyway in violation of the agreement. The Court has adequately addressed this issue in the Court's Order after the pleadings were filed in the previous show cause order. However, Mr. LeFlore has attached an affidavit to this pleading, **Exhibit A.**, once again explaining why Mr. Carson was transferred and that he did not know of the Order which has no time limits or prohibitions, nor does he interfere in a TDCJ-CID Unit Classification Committee's (UCC) decisions except in rare circumstances.

Mr. Carson also alleges that the Unit? Classification Committee (UCC) at the Michael Unit has retaliated against him by subjecting him to punitive sanctions?, housing and job assignments, contraindicated by his health problems.

III.

Mr. Carson, who is not a physician or health care professional, has now alleged that the Michael Unit Health Providers have been deliberately indifferent to his serious medical needs. He alleges that he has a carcinogenic infection under his eye that they will not treat, or refer him to a Dermatologist, or conduct a biopsy, and further they will not treat his back pain, headaches, dizziness, that he is susceptible to liver damage, failure or death because they will not treat his Hepatitis-C, nor will they not treat his bulging spinal disc, hearing impairment, hypertension, and HCV. He alleges that his medical restrictions were removed and as a result he received a disciplinary case for refusing to sleep in a top bunk because of his back, and that a Ms. Johnson and

a Ms. Buchanan at the Michael Unit have deliberately deleted his medical restrictions from his file and falsified his medical records. Mr. Carson also alleges that Ms. Buchanan told him that his liver enzymes were at a dangerous level, but she refused to provide any treatment to prevent liver damage. She also refused to provide him with any medication or treatment for his headaches and dizziness. She also prescribed an additional hypertension drug, hydrochlorothiazide, 25 mg., and refused to provide him information regarding the dangers of this drug and the dangers of taking it with his other drugs, Diltiazem, Enalapril and Aspirin.

Ms. Buchanan denies Mr. Carson's allegations. Ms. Johnson no longer works for the TDCJ. Mr. Carson's allegations are without merit, **Exhibit C**.

BACK PAIN

Mr. Carson alleges he has been denied evaluation, treatment, and restrictions for his chronic back pain. Ms. Buchanan did not treat Mr. Carson for his alleged back problems, as he never complained about them to her. Her understanding, also, is that when Mr. Copeland, a PA, examined him, he also did not complain of a back problem see **Exhibit B**.

The records reflect that on April 24, 2006, and May 26, 2006, respectively, soon after his transfer from the Coffield Unit, Mr. Carson was seen by the medical provider on May 1, 2006, **C p. 28**, at the Michael Unit, regarding his back, a week after he filed Step One and Step Two Grievances #2006142764, **Exhibit D**, Mr. Carson was denied a low bunk restriction as he did meet the medical criteria at the time, **Exhibit C-1**. But, on May 25, 2006, Mr. Carson was allowed to take Tylenol at the "pill window" for his back pain, **Exhibit G-4**, and his TDCJ Health Summary for Classification (PUHLES), dated June 15, 2006, reflects that back and hearing restrictions were imposed. **Exhibits E and F**, respectively. See also, **Exhibits G-1 through G-5**, respectively.

Mr. Carson was also evaluated for his subjective complaint of back pain and bulging disc during an annual physical examination July 5, 2006, **Exhibit C- p. 32**. Thus, Mr. Carson's PUHLES chart dated July 13, 2006, **Exhibit O**, was revised, showing the following restrictions regarding his back.

- 1) No lifting over 25 lbs.
- 2) No bending at the waist
- 3) No squatting
- 4) No climbing
- 5) No work exposure to loud noises

as well as the July 13, 2006, October 19, 2006, November 6, 2006, November 13, 2006, November 28, 2006, December 2, December 5 and December 6, 2006, PUHLES, respectively, **Exhibits H-1 through H-4, C- p.60, 61, 109, 110, 111, 112, 113**, respectively. His current medical restrictions include low bunk, no lifting over 25 pounds, no bending at waist, and no squatting. These restrictions were ordered based on his subjective complaints of low back pain, **Exhibit B**.

However, on November 27, 2006, Mr. Carson received and was convicted in Disciplinary Charge #20070091637 for failure to sleep in the top bunk of his cell. As a result, Mr. Carson filed a Step One Grievance # 2007055089, on December 1, 2006, which was reviewed by Assistant Warden Pratt on January 5, 2007. Warden Pratt admitted that a mistake had been made, and the conviction was overturned, and his medical restrictions restored **Exhibit I**.

EYE

Mr. Carson's medical records reveal that he was evaluated by a physician for his complaint of a chronic skin lesion below his right eye on March 13, 2006, C- p. 45. and on November 13, 2006. See, **Exhibit C- p. 62**. The Diagnosis was "a chronic skin pigmentation probably from chemical irritation." Betamethasone Cream and Diprosone Cream were prescribed **Exhibit C- p. 25**. He was

seen again on December 26 and 29, 2006, respectively, **Exhibits C- p. 22 and 43.** respectively. Based on this examination, a skin shave biopsy was performed. The results of that biopsy revealed subacute dermatitis. **Exhibit C- p. 88.** This condition is not an infection and not cancerous. He was seen for follow up of this condition by the unit Medical Doctor on January 22, 2007, and the appropriate medication, Betamethasone Cream, as well as Plendil and Diprosone Cream were prescribed, **Exhibit C-6 and C-7, C p. 52,** respectively. See the Sick Call Requests (SCR) for March 1 and March 13, 2006, respectively, **C- p. 45, 46 and 47,** respectively. During a physical examination on July 5, 2006, **Exhibit C- p. 33** Mr. Carson was prescribed medications for his eye. See, also, **Exhibits J and K,** respectively.

HEPATITIS, HYPERTENSION, HEADACHES and DIZZINESS

Mr. Carson alleges that he has been denied evaluation and treatment for chronic Hepatitis C (headaches, eye, dizziness and backaches as well). Mr. Carson filed a Step One Grievance #2007050761 on November 24, 2006, and a Step Two Grievance on January 3, 2007, **Exhibits J and K,** respectively. The responses state that he was treated on November 6, 2006, **Exhibit-C p. 2,** for his alleged dizziness, hypertension and other complaints in response to his allegations of inappropriate evaluation and treatment for dizziness and headache, which have been evaluated and treated on several occasions. **Exhibits C, pgs. 2-3, 4, 17, 18, 19, 20, 26 27, 33, 41, 43 and 98-108,** respectively. During an examination with a unit Physician's Assistant (PA), Mr. Copeland, on March 1, 2007, Mr. Carson was referred to a University of Texas Medical Branch (UTMB) specialty clinic for evaluation of these complaints,

Further, Mr. Carson has been treated in the chronic clinic for Hepatitis C on numerous occasions March 28, 2006, April 3, 2006, July 5, 2006, and November 11, 2006) **Exhibits C- pgs.**

4, 5, 6, 10, 16, 17, 36, 94, respectively. He is currently undergoing evaluation to see if he is candidate for treatment of Hepatitis C and has additional laboratory studies pending. The results should be known in April of 2007.

Mr. Carson's allegations that he has suffered retaliation, punitive sanctions and reprisals as a result of Ms. Buchanan and Ms. Johnson's actions are just that, allegations. Mr. Carson's various health complaints have been addressed and treated by the Michael Unit health providers **Exhibit C**.

See, also **Exhibits L, M and N**, respectively, which are letters dated October 8, 1999, November 20, 2002, and November 26, 2002, respectively, to Mr. Carson addressing his medical complaints.

DELETED RECORDS

_____ **Exhibit O**, which is a reply to a grievance by Mr. Carson, dated August 31, 2006, explains the change in Mr. Carson's medical and classification records, which show that there was no intentional deletion or conspiracy to harm Mr. Carson.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

NOTICE OF ELECTRONIC FILING

I, M. LAWRENCE WELLS, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above an foregoing in accordance with the Electronic Case Files system of the Eastern District of Texas, on this the 2nd day of April 2007.

/s/ M. LAWRENCE WELLS
Assistant Attorney General

CERTIFICATE OF SERVICE

I, M. LAWRENCE WELLS, do hereby certify that a true and correct copy of the above and foregoing **Martinez Report** has been served by placing the same in the United States mail, postage prepaid, on this the 2ND day of April 2007, addressed to:

Arthur Carson, TDCJ NO. 517349
Michael Unit
P.O. Box 4500
Tennessee Colony, Texas 75886

/s/ M. LAWRENCE WELLS
Assistant Attorney General